IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.621 OF 2003

1) Bhupal Shivappa Aawte,
Age about 47 years,
Occ. Business, R/o.13th Lane,
475, E-Ward, Jaisingpur,
Tal. Shirol, Dist. Kolhapur.

2) Sridhar Shivappa Aawte
Age about 37 years,
Occ. Business, R/o.-do-

3) Smt. Aakkatai Shivappa Aawte
Age about 62 years,
Occ. Household Work, R/o.-do-

4) Sou. Kamal w/o. Kuber Chougale
Age about 40 years,
Occ. Household work,
R/o. Patel Chowk, Jaisingpur,
Tal. Shirol, Dist. Kolhapur.

5) Sou. Shaila w/o. Kumar Aarasgonda, Age about 30 years,
Occ. Household work,
R/o. Jaisingpur, ... **Appellants**
Tal.Shirol, Dist.Kolhapur. **(Original Defendants)**

Versus

Jinnappa Aannappa Aawte,
Age about 54 years, Occ. Business
R/o. Block No. 474, E-Ward,
13th Lane, Jaisingpur, ... **Respondent**
Tal.Shirol, Dist.Kolhapur. **(Original Plaintiff)**

Mr. M.J. Jamdar for Appellants

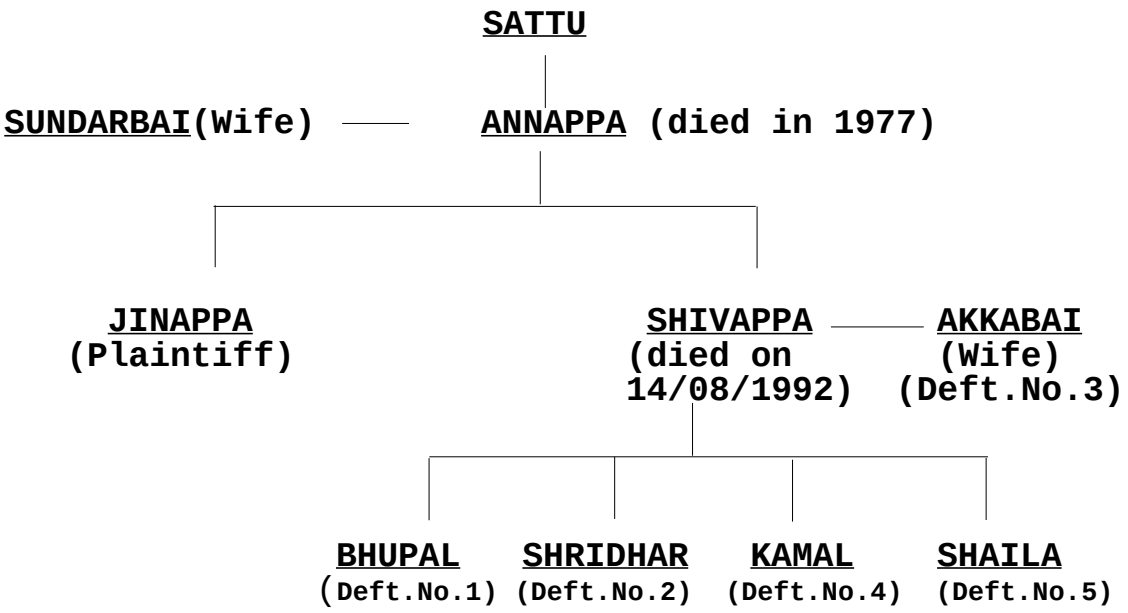
Mr. S.S. Pandit for Respondents

CORAM : **S.R.SATHE,J.**
DATED : **3rd May,2006**

ORAL JUDGEMENT :-

1. By consent heard finally at admission stage.

2. Appellants the original defendants in Special Civil Suit No. 123 of 1994 have preferred this appeal against the judgement and order passed by the Court of Civil Judge, Sr. Division, Kolhapur, whereby, Plaintiff's suit for partition and separate possession of his one of share was decreed in his favour and defendant were directed to hand over the possession accordingly. For the sake of convenience, hereafter the parties shall be referred to as Plaintiffs and defendants. In order to appreciate the facts of this case, it would be worthwhile to set out the genealogy, showing relations between the parties.



3. According to Plaintiff, the house property bearing City Survey No. 1739 of which Municipal Block No. is 474 and City Survey No.1740 of which Municipal Block No. is 475 are the joint family properties of Plaintiff and defendants. The said properties are purchased by Plaintiff, defendant's predecessor Shivappa and their father Annappa by virtue of registered Sale Deed dtd. 19/12/1976, out of joint family income. As result of family settlement or arrangements, Plaintiff is residing in the house property bearing Block No. 474 while his brother Shivappa is residing in house property bearing No. 475. However, the actual partition has never taken place between them. When the above mentioned properties were purchased, the same were open lands. Thereafter, construction was carried out over the said plots with the help of the joint family income.

4. Shivappa filed two civil suit Nos. 179 of 1975 and 276 of 1980 against present Plaintiff in the Court of Civil Judge, Junior Division, Jaisingpur and claimed possession of the property which was occupied by the present Plaintiff in Municipal Block No. 474 and also claimed permanent injunction in the other suit, restraining the Plaintiff from carrying out any

construction. In both the suits, Shivappa alleged that, above mentioned properties are his self acquired properties while the present Plaintiff who was then defendant in the abovementioned suits contended that, the suit properties are the joint family properties of the Plaintiff and the defendants and it is only by way of family arrangement that he was residing in some portion of Block No. 474.

5. Both the abovementioned suits were decreed in favour of Shivappa, however, the present plaintiff filed regular Civil Appeal No. 54 of 1985 and 55 of 1985 respectively against above mentioned two suits. Both the appeals were allowed by the District Court holding that, suit properties are not self acquired properties of Shivappa but the same are joint family properties of Shivappa and his brother i.e. present Plaintiff Jinnappa. Being aggrieved by the said order, Shivappa preferred Second Appeal in the High Court at Judicature at Bombay. However, the same also came to be dismissed. Shivappa did not carry the said matter further to the Apex Court. Thereafter on 09/02/1994, the Plaintiff Jinnappa filed the present suit for partition and separate possession of his one of share against the wife and children of late Shivappa.

6. The defendants filed their written statement and counterclaim at Exh-21 and raised several contentions. Firstly, the defendants contended that, description of the suit property given by the Plaintiff is not correct. They admitted relationship mentioned by the plaintiff in plaint, however contended that, the said properties are not the joint family property of the Plaintiff and defendants. On the contrary, the same are self earned properties of their predecessor Shivappa. He had purchased the same by registered sale deed dated 19/12/1956. According to them, as the financial position of Annappa was not good, Shivappa left their village Nandani and went to Sangli in search of a job and accordingly, he served at Sangli at various places and out of the said earnings, he started a grocery shop at Jaisingpur. Thereafter, out of the income of the said shop, he constructed 15 rooms on the abovementioned plots. However, when Plaintiff shifted to Jaisingpur he had no place for residence and therefore, two rooms out of Block no. 474 were given to him by way of gratuitous licensee. The defendants further contended that, merely because decree for possession was not passed in the earlier suits that does not mean that, the lawful declaration has been

made by the said Court that the suit properties are the joint family properties.

7. The defendants further contended that, the municipal taxes of the abovementioned properties were throughout paid by Shivappa. The license of the grocery shop was also obtained in the name of Shivappa and the contention that, the grocery shop was also of joint family and construction was carried out on the suit plots with the help of joint family income is not correct.

8. The defendants also contended that since in the year 1975 when Shivappa filed above mentioned two earlier suits, he had specifically denied the claim of Plaintiff that the suit properties are the joint family properties and Plaintiff is having share in the same, the suit filed by the Plaintiff in 1994 is barred by law of limitation. The defendants therefore, prayed for dismissal of the suit.

9. By way of counterclaim, the defendants contended that, if at all it is held that the suit properties are the joint family properties of Plaintiff and defendant then it should be considered that, the construction on the above suit plots has been carried

out by Shivappa by spending an amount of Rs. 15,000/- and the present market price of the same is about Rs. 2 lacs and as such the Plaintiffs be directed to give Rs. 1 lac to the defendants. Similarly, Shivappa paid municipal taxes of the said properties from the year 1956 and as such the Plaintiff be asked to pay Rs. 9315.15 paise by way of his contribution towards the same. Besides this, the Plaintiff has also not brought on record the movable property held by the Plaintiffs and in particular the golden ornaments of the mother of the Plaintiff. According to defendants, about 35 tolas of gold ornaments of Plaintiff's mother have been received by the Plaintiff and as such, the defendants are entitled to one half share in the same. The defendants also alleged that, the Plaintiff has received the sale price of the ancestral house bearing CTS No.396 which was sold by the Plaintiff's father to one Ainapure on 31/12/1995 for Rs. 10,000/- and defendants are having share in it.

10. The defendants further claimed that, mother of the Plaintiff and Shivappa namely Smt. Sunderabai died in accident on 25/05/1975 and Plaintiff alone compromised the said matter with the owner Baburao Magdum of Udgaon and received amount of Rs. 50,000/-

and as such the defendants are entitled to get Rs. 25,000/- out of the same. Thus, the defendants claimed total amount of Rs. 2,89,315.15 paise from the Plaintiff by way of counterclaim and for that purpose paid the necessary Court Fee Stamp. Lastly, the defendants contended that, some portion of Block No. 474 is abutting to Shirol-Jaisingpur Road and the price of the said Block No. 474 is five time more than the value of Block No. 475. They therefore claimed that, if at all partition is directed, then one half portion on the Northern side of Block No. 474 adm. 50 X 40 be given to their share.

11. The Plaintiff filed his Written Statement to the counterclaim of the defendants and contended that, the defendants have filed the counterclaim only with a view to harass the Plaintiff in his advance age. He further contended that, all the contentions which are taken in the present suit by the defendants were raised by them in the earlier two suits. Both the said suits have been finally decided in Plaintiff's favour by the High Court and as such findings recorded in the earlier two suits have acquired finality and defendants claim in that behalf is barred by principle of res-judicata. He further contended that from the joint family income

construction has been carried out in the two suit Plots and out of that 11 rooms are in possession of the defendants while only 4 rooms are with Plaintiff. Out of the said 11 rooms, 8 rooms have been let out by defendants to tenants and from that they are getting rent of Rs. 4000/- per month and municipal taxes are being paid out of the said rent amount. So, defendant's claim in that behalf is also not legal and correct. The Plaintiff also contended that he did not receive any amount out of the compensation nor he received any amount out of the sale proceeds of their ancestral house. He also denied the defendant's allegation that, Plaintiff's mother was having golden ornaments weighing about 35 tolas and that he received the same. The Plaintiff further contended that, his father Annappa was suffering from brain tumor. For his medical treatment huge amount was required and the same was spent out of the sale proceed and by selling the ornaments of Plaintiff's mother. He therefore contended that, defendant's counterclaim be dismissed.

12. On these pleadings, the Ld. Trial Judge framed issues at Exh-22. In order to prove his case. The Plaintiff examined himself at Exh-29 and produced certain documents. As against this, on behalf of

defendants, defendant No.1 Bhupal Aawte was examined at Exh-174/9 and witness Gundappa Aawte at Exh-189/C. They also produced certain documents. After considering the evidence adduced by both the parties, the Ld. Trial Judge came to the conclusion that in regular Civil Appeal No.54 of 1984 and 55 of 1985, the district court has held that, the suit properties are the joint family properties of Plaintiff and defendants and the said issues have attained finality and as such the defendants are in fact, now not entitled to contend that, the suit properties are the self acquired properties of Shivappa or that the same are not joint family properties. The Ld. Trial Judge further held that, the above mentioned two civil appeals have been decided on 30/04/1993 and present suit is filed on 09/02/1994 and the same is not barred by law of limitation and there is no material to show that, the Plaintiff was excluded from the joint family as contemplated by Art-110 of the Limitation Act, 1963. He therefore held that the Plaintiff is entitled for partition and separate possession of his one of share in the suit properties. He also held that, the defendants have failed to prove the counterclaim. He therefore, decreed the Plaintiff's suit in his favour and dismissed the counterclaim.

13. The abovementioned order is challenged by the original defendants in this appeal. Shri Madhav Jamdar, learned Advocate for defendants has urged 3 points before me. Firstly, he submitted that, the Ld. Trial Judge has not properly appreciated the evidence on record and wrongly held that the suit properties are not the self acquired properties of Shivappa and that, the same are joint family properties of Plaintiff and the defendants. Secondly, he canvassed before me that issue involved in the present suit was not issue in the earlier suit. Moreover, the earlier court was not competent to try the present suit considering the valuation of the suit property in the present suit and as such the principle of res-judicata will not come into play. Lastly, he submitted that, the plaintiff has clearly admitted that, in the year 1968, he came to know that, his brother Shivappa is asserting that, the suit properties are his (Shivappa's) self acquired properties and not joint family properties. Besides this, at any rate in 1975, Shivappa had specifically filed suit against present plaintiff alleging that, suit properties are his self acquired properties. So, it was necessary for the Plaintiff to file suit for partition within 12 years from 1968 or at any rate

within 12 years from 1975, when defendant's father Shivappa had specifically contended that, the Plaintiff has no right in the suit properties and the suit properties are self acquired properties, however, the suit is filed in the year 1994 and the same is barred by law of limitation.

14. As against this, Shri Pandit, Ld. Advocate for the Plaintiff supported the judgement and order passed by the Trial Court and submitted that, merely because the earlier Court was not competent to try the present suit on account of pecuniary jurisdiction it can not be said that, principle of res-judicata is not applicable. According to him, the defendants are in fact not entitled to contend that, suit properties are self acquired properties of Shivappa as the said issue is finally decided in the earlier proceedings. Secondly, he canvassed before me that, Shivappa had not denied Plaintiff's claim knowing that, the suit property was the joint family property but had alleged that, it is self acquired property. So it was not obligatory on the part of Plaintiff to file suit for partition. Moreover in 1993, it has been finally held by the Court that the suit property is joint family property and as such the present suit is in time.

15. The relationship between the parties is not in dispute. It is also admitted fact that defendants predecessor Shivappa had filed two suits bearing No.179 of 1975 and 276 of 1980 and against the orders passed in the said suit, present Plaintiff had preferred regular civil appeal No. 54 of 1985 and 55 of 1985 and both have been decided in his favour and said findings are confirmed even by the High Court in second appeal. The Plaintiff has produced at Exh-120, the certified copy of judgement passed in regular Civil Appeal No. 54 and 55 of 1985. From the perusal of the same, it is very clear that, following issues were framed by the Appellate Court.

> ***(i)*** *Whether the suit properties are properties of joint family ?*
>
> ***(ii)*** *Whether the Plaintiff (Shivappa) prove that, suit property is self acquired property?*

16. First question was answered in the affirmative and second in the negative. Findings recorded on both the issues have acquired finality. It must be noted that in the present suit also issues are whether the suit properties are the joint family properties of

Plaintiff and defendants and whether the defendants have proved that, suit properties are the self acquired properties of their predecessor Shivappa. Thus, it is crystal clear that, issues involved in the earlier suit and the issues involved in the present suit are the same. Admittedly, the properties involved in both the suits are also the same and parties are also the same. In the earlier suit, the predecessor of present defendants was party. Thus, it is quite evident that, the issue with regard to joint family property has attained finality between the parties and as such the defendants are now not entitled to contend that the suit properties are not joint family properties or that, the same are self acquired properties of Shivappa. The defendant's contentions in that behalf are hit by the provisions of section 11 of Civil Procedure Code. Initially, it was tried to be argued on behalf of the defendants that as the value of the present suit is far more than pecuniary jurisdiction of the Court which tried the earlier suits filed by Shivappa and the principle of res-judicata is not applicable. However, subsequently, having regard to explanation-8 of section-11 of the Code of Civil Procedure, Shri Jamdar, Advocate for the defendant fairly conceded that, he can not argue that the issue

with regard to joint family property is not barred by principle of res-judicata. So, it must be held that, the findings recorded by the Ld. Judge that the suit properties are joint family properties of Plaintiffs and defendants and the same are not self acquired property are legal and correct.

17. In view of the above discussion, it is in fact not necessary to consider the evidence adduced by the parties on the point of nature of the properties i.e. Whether it is joint family property of Plaintiff and defendants or whether it is self acquired property of Late Shivappa. However, even from the perusal of evidence on record, it does appear that, the suit property is joint family property of Plaintiff and defendant. Though, it is true that, the suit plots have been purchased in the name of Shivappa, we can not ignore the fact that, there is no sufficient evidence on record to show that, Shivappa was having sufficient funds to purchase the said plot and thereafter, to construct the same. Moreover, if he alone had constructed the said property out of his own income then certainly, he would not have allowed to remain property bearing Block No. 474 in the name of present plaintiff. Though a feeble attempt is made on the part

of defendants to show that, Plaintiffs illegally got his name entered in the record of rights in respect of the said property besides the bare allegations, he could not adduce any evidence worth the name in that behalf. Then it must be noted that, four rooms out of the said constructed portion are admittedly in possession of the present Plaintiff. He is residing in two rooms and he has let out other two rooms. It has come on record that, he was recovering rent of the said two rooms. So, merely because there are several tax receipts issued in the name of Shivappa or his successor, we can not jump to the conclusion that the said property is self acquired property of Shivappa. Besides this, it has also come on record that, though the shop license was standing in the name of Shivappa, the electric meter obtained in the said shop premises was in the name of Annappa. So all these circumstances also go to establish that the suit properties are the joint family properties.

18. As rightly said by the Ld. Trial Judge, the defendants have miserably failed to adduce any evidence to prove the counterclaim. When it was the contention of the defendants that, Plaintiffs alone took the compensation amount in connection with the death of the

plaintiff's mother in the accident, it was very easy for the defendants to examine the owner of vehicle. However, they have not done so and on the contrary, have examined some other witness whose evidence does not inspire any confidence because it is difficult to believe that the owner would part amount of Rs. 50,000/- and hand over the same to said witness for giving it to plaintiff and that too without obtaining any receipt for the same from Plaintiff.

19. It has also come on record that Plaintiff's father was suffering from brain cancer. So, it is possible that he might have spent the amount of sale proceeds of their house and some amount realised by sale of ornaments. It is needless to say that, when defendants wanted to claim any share in the ornaments or in the other properties, it was absolutely essential on the part of the defendants to show that particular properties are in fact, available for partition. The defendants have failed to prove the same. So considering these aspects, the Ld. Trial Judge has rightly dismissed the counterclaim of the defendants.

20. The main and the material question is whether the Plaintiff's suit is barred by law of limitation.

Shri Jamdar, Ld. Advocate for the defendants strenuously argued before me that, in the instant case the Plaintiff has in fact admitted in his cross-examination that, in the year 1968 he came to know that, Shivappa was asserting that, suit properties are his (Shivappa's) self acquired properties. So, it means that, in the year 1968 itself, Shivappa had excluded Plaintiff from the joint family and it was necessary for him to file suit for partition within 12 years from the same. He further argued that, admittedly in the year 1975, by filing a suit, Shivappa had specifically averred that, the suit properties are his self acquired properties. So, again Plaintiff was excluded from the joint family properties but still then present plaintiff did not file a suit for partition within 12 years from 1975 and as such the same is barred as per Article-110 of the Limitation Act, 1963.

21. In order to find out whether there is any substance in the argument advanced by the Ld. Advocate for the defendants it would be worthwhile to see what Article-110 of the Limitation Act, 1963 says. It runs as follows:-

	Description of suit	*Period of limitation*	*Time from which period begins to run*
110.	**By a person excluded from a joint family property to enforce a right to share therein.**	**Twelve years**	**When the exclusion becomes known to the Plaintiff**

22. It is needless to say that, onus is upon defendants to prove that, the Plaintiff has been excluded from the share of the joint family property and that too for a period of 12 years or more to the knowledge of the Plaintiff if he wants to succeed in his plea that, the right of the Plaintiff has been barred by limitation. It has been so held in **Radhoba Baloba Vagh & Ors., V/s. Aburao Bhagwantrao Shirole & Ors. A.I.R. 1929 Privy Council 231**. According to Ld. Advocate for the defendants filing of earlier suit is itself sufficient to show that, Plaintiff was excluded from the joint family, because as a result of the said suit, Shivappa had denied Plaintiff's share in the joint family property. In order to substantiate this proposition Shri Jamdar, Ld. Advocate for the appellant has cited several rulings such as :-

1. *Radhoba Baloba Vagh and Ors., Appellants V/s. Aburao Bhagwantrao Shirole*

and Ors., Respondents A.I.R. 1929 Privy Council 231.

2. *Velayudhan Gopala Panickan, Defendant V/s. Velumpi Kunji, 2nd Plaintiff. AIR 1958 KERALA 178.*

3. *Gajapati Narasimha Deo Garu and another Plaintiffs-Appellants V/s. Gajapati Krishna chandra Deo Garu and another-Defendants – Respondents AIR 1920 MADRAS 793.*

4. *Marudanayagam Pillai, Appellant V/s. Sola Pillai (died) and others, Respondents 1965 MADRAS 200.*

5. *Lingangauda Hiragaudar V/s. Saugan gauda Hirangauda, Vol-35 Bombay Law Reporter 779.*

23. In all these authorities, it has been held that, if suit for partition is filed 12 years after the time, the Plaintiff is excluded or denied the share in the joint family properties then such suit is hit by Article-127 of the old Limitation Act i.e. Present Article-110 of the Limitation Act, 1963. I have carefully gone through the above cited rulings. The facts of those cases and the facts of the case in hand

are different. The most striking distinction between the same is that in all those authorities, there was no clear cut case where the defendants had specifically alleged that, the properties in question is the self acquired property of the defendant and on that basis, suit was filed. It is pertinent to note that, in the instant case there is abundant evidence on record to show that the joint family properties are possessed by both the parties separately. Naturally, merely because particular property is possessed only by one party for a long time, it can not be said that, the said party had excluded other party from the joint family properties. In fact, in all the above mentioned authorities also it has been held that question whether the person has been “excluded” must depend upon the facts of each particular case and intention to exclude is an essential element. The court must be satisfied that there was an intention on the part of those in control or possession in joint family properties to exclude the other copartner from joint family property. In order to constitute 'exclusion', there must be something to indicate that, the Plaintiff abundant his claim to enjoy the family properties or that, the defendants to his knowledge excluded him from enjoyment. Here in the instant case, mere assertion of

the defendants predecessor Shivappa that, suit properties are his self acquired properties would not amount to excluding the Plaintiff from the joint family properties, particularly, when there is sufficient material to show that, some of the joint family property was in exclusive possession of the Plaintiff and he was enjoying fruits of the same. In fact, at that point of time also Plaintiff was enjoying the said properties as joint family properties alloted to him for convenience purpose.

24. The word “exclusion” is not defined in the Limitation Act but if we take its literal meaning, it amounts to keeping out or ousting. Even in **P.Laxmi Reddy V/s. L. Laxmi Reddy, AIR 1957 SC 314**. The Supreme Court has made it clear that, there must be assertion of hostile title coupled with exclusive possession and enjoyment by one co-owner to the knowledge of other so as to constitute exclusion of one co-sharer by the other. It is also well settled that, so long as property is continued to be held as undivided family property, Limitation will not run against the member who has not been excluded from his share. It must be noted that in 1975, by filing the suit, the defendant's predecessor Shivappa agitated that the suit property is

self acquired property so it must be noted that even at that time, it was not his case that, initially entire property was the joint family property but he (shivappa) excluded Plaintiff from the enjoyment of the said property by asserting hostile title and remained in possession continuously. Asserting that, particular property is self acquired property is one thing and alleging that initially the property in question was joint family property but a particular member has been ousted from that property is another thing. In fact, the very word 'exclude' presupposes that, initial nature of the property is joint family property is not in dispute. The word "exclude" implies previous inclusion when Shivappa has not admitted that previously the property in question was a joint family property or in other words, when previous inclusion of the property in question as joint family property is not admitted. It does not lie in his mouth to say that he excluded the Plaintiff as contemplated under Article-110 of the Limitation Act. So, taking into consideration the peculiar meaning of the word 'exclusion' or 'excluded', it must be said that in the instant case in the year 1975 when the suit was filed by the defendant's predecessor Shivappa, Plaintiff

specifically alleged that, suit property is joint family property and at that time, in fact, for the first time, question arose as to whether it was joint family property or not ? Thereafter, the Plaintiff opposed Shivappa's contention and ultimately court finally held in 1993 that the suit property is the joint family property of Plaintiff and defendants.

25. Thus, this is not a case where the Plaintiff has kept mum when Shivappa filed suit claiming suit property as self acquired property. Had it been so, then perhaps it could have been argued that time started running against Plaintiff. Here the Plaintiff opposed Shivappa's suit by contending that it is joint family property. He succeeded in that. There was no need for having formal declaration to that effect in the form of decree. It was never the case of Shivappa that he has become owner of the suit property by adverse possession.

26. So under such circumstances, if Plaintiff has filed the suit for the partition in the year 1994, it can not be said that, same is barred by the Article-110 of the Limitation Act.

27. It was tried to be argued on behalf of the defendant that admittedly for several years, the Plaintiff was in possession of 4 rooms while defendant was in possession of 11 rooms and as such the Article-110 would be applicable at least in respect of those 11 rooms which were in possession of the defendant. It was also argued that there is slight difference in the wording of old Article-127 of the Limitation Act and present Article-110 of the Limitation Act. It is said that inclusion of the article 'a' prior to word joint family property appearing in Article-110 of new Limitation Act,1963 it has widen the scope and now exclusion can be even in respect of one of the joint family properties. The word 'Excluded' implies previous exclusion. When Shivappa has not admitted that previously the property in question was a joint family property or in other words when previous 'inclusion' of the property in question as joint family property is not admitted it can not be said that he 'excluded' the Plaintiff as contemplated under Article-110 of the Limitation Act. However, once it is held that, the defendant's predecessor Shivappa has in fact not excluded the plaintiff from the joint family properties as contemplated under Article-110 of Limitation Act, the question of application of this article to part of

the properties does not arise. In fact, in **Aparna Bakhsh Singh V/s. Chandra Shekhar Singh and Ors., AIR (30) 1943 Oudh 177**. It has been held that, the fact that a member of the Joint Hindu Family is allowed to cultivate only a small portion of the joint property is not sufficient by itself to warrant the finding that he was excluded from the Joint Family Property.

28. Thus having regard to the peculiar circumstances of this case and the legal position, I have no hesitation to hold that, the Ld. Trial Court has rightly held that, suit is not barred by Law of Limitation. Thus, findings recorded by the Ld. Trial Judge unassailable, there is no necessity to interfere with the same.

29. In this view of the matter, there is no substance in this appeal. The appeal is dismissed with costs. However, it is directed that while executing the decree for partition the suggestion made by the defendant regarding half portion of the property bearing Block Municipal No. 474 to him be given effect. At this stage, the learned Advocate for the appellants, Original Defendants submitted that abovementioned order be stayed for further period of three months. Having

regard to the fact that original suit is of 1994, I do not find it necessary to stay the entire order in this appeal. However, it is only directed that if execution proceeding is started by the original Plaintiff, then actual delivery of possession should not be carried out till 16/08/2006.

(S.R. SATHE,J.)